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ALBERT W. WATKINS 30844 NE 1ST AVENUE ST. JOSEPH, MN 56374			FUQUA, SHAWNTINA T	
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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JOHN M. RICE

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Appeal 2009-0429  
Application 10/750,738  
Technology Center 3700

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Decided<sup>1</sup>: February 18, 2009

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Before JAMESON LEE, SALLY C. MEDLEY, and MICHAEL P.  
TIERNEY, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

DECISION ON APPEAL

A. STATEMENT OF THE CASE

This is a decision on appeal by an Appellant under 35 U.S.C. § 134(a) from a final rejection of claims 1-14. The Appellant requests reversal of the

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 CFR § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Examiner's rejection of those claims. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

References Relied on by the Examiner

Box	5,073,699	Dec. 17, 1991
Stasyszyn	5,196,677	Mar. 23, 1993

The Rejections on Appeal

The Examiner rejected claims 1, 2, 6-8, 11, 12, and 14 under 35 U.S.C. § 102(b) as anticipated by Box.

The Examiner rejected claims 3-5, 9, 10, and 13 under 35 U.S.C. § 103(a) as unpatentable over Box in view of Stasyszyn.

The Invention

The invention relates to a beverage pot with a spacer that tilts the pot relative to a warming surface. (Spec. 6:23-7:5.)

Claim 1 is reproduced below (Claims App'x 16:2-9):

1. A combination beverage pot and warming surface having a beverage pot suitable for retaining a liquid beverage therein and a base, and a warming surface providing a source of heat which couples with said beverage pot base for maintaining said liquid beverage at a temperature elevated with respect to a surrounding ambient temperature, wherein the improvement comprises a spacer between one portion of said beverage pot base and said warming surface to elevate a majority of said beverage pot base above and separate from said warming base while tilting said beverage pot base relative to said warming surface, a minority of said beverage pot base in direct contact with said warming base.

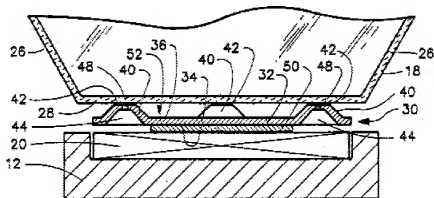
B. ISSUE

Has the Appellant shown that the Examiner erred in finding that Box inherently discloses a spacer that tilts a liquid retaining pot on a warming base?

C. FINDINGS OF FACT

1. Box discloses a warming unit for use as a hot plate for coffee pots. (Box 2:33-35.)
2. In Box, a thermal interface device 30 is inserted between a hot plate 20 and a coffee pot 18. (Box 5:9-13.)
3. Thermal interface plate device 30 includes a flat plate portion 32 and a plurality of dome-shaped support structures 40. (Box 5:14-33.)
4. The support structures 40 are “located equiangularly around and spaced from peripheral edge 38 of flat plate 32.” (Box 5:33-36.)
5. The support structures are also disclosed as being “oriented along a geometric surface complementary to the shape of the base of the coffee pot.” (Box 3:33-37.)

6. Figure 4 of Box is reproduced below:



**Fig.4**

Figure 4 shows thermal interface device 30 interposed between a hot plate 20 and a coffee pot 18. (Box 6:7-15.)

7. Once pot 18 is located on the support structures, a convection space 52 is formed between the flat plate 32 and pot base 28. (Box 6:15-17.)

8. Convection space 52 is shown having a uniform thickness and is formed with only minimal contact between the pot base and the thermal interface device. (Box Figure 4; 6:15-18.)

9. The convection space causes reduced heating from thermal conduction. (Box 6:63-65.)

10. Box's invention eliminates localized and excessive heating of a coffee pot by creating the convection space between the pot and a heating surface. (Box 6:59-65.)

11. Box does not disclose any embodiment in which the pot sits on less than all of the support structures and in a tilting manner.

D. PRINCIPLES OF LAW

To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently. *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). Inherency may not be established by probabilities or possibilities, and the mere fact that a certain result “may” follow from a given set of circumstances is not sufficient. *MEHL/Biophile International Corp. v. Milgraum*, 192 F.3d 1362, 1365 (Fed. Cir. 1999); *In re Oelrich*, 666 F.2d 578, 581 (CCPA 1981).

E. ANALYSIS

The Examiner rejected claims 1, 2, 6-8, 11, 12, and 14 as anticipated by Box. We focus on the disputed limitations. The Appellant disputes that Box satisfies the requirement relating to a spacer that tilts a beverage pot on a warming base while maintaining contact of the pot with the warming base. Each of independent claims 1, 7, and 12 include a corresponding limitation.

Claim 1 is drawn to a combination beverage pot and warming surface and includes a limitation that reads (Claims App’x 16:6-10):

a spacer between one portion of said beverage pot base and said warming surface to elevate a majority of said beverage pot base above and separate from said warming base while tilting said beverage pot base relative to said warming surface, a minority of said beverage pot base in direct contact with said warming base.

Claim 7 drawn to a coffee serving apparatus including a liquid retaining pot and heating base in combination with (Claims App’x 17:14-17):

a means to tilt said liquid retaining pot with respect to said heating base while maintaining said liquid retaining pot base in point

contact with said heating base, said retained liquid pooled to a maximum depth adjacent said point contact.

Claim 12 is a method for extending the serving life of a warm beverage held within a pot that includes the steps of (Claims App'x 18:16-19:3):

placing a spacer upon said warming surface in a location offset from center with respect thereto;

supporting a minority portion of said pot bottom upon said spacer and a second minority portion of said pot bottom upon said surface, a majority portion of said pot bottom spaced from but adjacent and elevated with respect to said warming surface;

The Examiner found that Box's elements 30, 40, and 42 form a spacer. To account for the above-quoted limitations, the Examiner stated (Ans. 3:15-4:2):

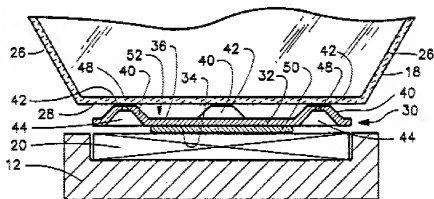
While Box does not explicitly state that the spacer is a means to tilt the pot so that a minority of the pot base is in direct contact with the warming base and a second minority is on the warming surface to form an air blanket therebetween, and wherein point of contact between pot and warming base is where a retained liquid in pot is pooled to a maximum. It is inherent that Box's spacer is capable of meeting the above mentioned criteria simply by placing the pot on the spacers in a tilted manner i.e. one edge of pot could be placed on one spacer while other edge of pot could be placed on base (32) thereby tilting pot so that a minority of pot base is in direct contact with the warming base.

Thus, according to the Examiner, Box anticipates claims 1, 7, and 12 because its spacers would inherently be capable of tilting a liquid retaining pot.

Box discloses a warming unit for use as a hot plate for coffee pots. (Box 2:33-35.) In Box, a thermal interface plate device 30 is inserted

between a hot plate 20 and a coffee pot 18. (Box 5:9-13.) Thermal interface plate device 30 includes a flat plate portion 32 and a plurality of dome-shaped support structures 40. (Box 5:14-33.) Support structures 40 are “located equiangularly around and spaced from peripheral edge 38 of flat plate 32” and create a platform that receives pot 18. (Box 5:33-36.)

Figure 4 of Box is reproduced below:



**Fig.4**

Figure 4 shows thermal interface device 30 interposed between a hot plate 20 and a coffee pot 18. (Box 6:7-15.)

As shown in Figure 4, the base 28 of coffee pot 18 is centered on the support structures 40 of thermal interface device 30. Once the pot is located on the support structures, a convection space 52 is formed between the flat plate 32 and pot base 28. (Box 6:15-17.) Convection space 52 is shown having a uniform thickness and is formed with only minimal contact between the pot base and the thermal interface device. (Box Figure 4; 6:15-18.) The convection space causes reduced heating from thermal conduction. (Box 6:63-65.) None of Box’s embodiments disclose a pot that sits on less than all of the support structures and in a tilting manner.



As noted above, the Examiner relied on an inherency theory to account for the tilting requirement of the Appellant's claims. In particular, the Examiner stated that in Box (Ans. 3:20-4:2):

one edge of pot *could be* placed on one spacer while other edge of pot *could be* placed on base (32) thereby tilting pot so that a minority of pot base is in direct contact with the warming base. (Emphasis added).

Inherency may not be established by probabilities or possibilities, and the mere fact that a certain result "may" follow from a given set of circumstances is not sufficient. *MEHL/Biophile International Corp.*, 192 F.3d at 1365; *In re Oelrich*, 666 F.2d at 581.

The Appellant's claims 1 and 7 are both drawn to a combination of a beverage or liquid retaining pot, a heating base, and a device that tilts the pot relative to the heating base. Claim 12 is a method claim that requires the step of supporting a pot bottom on a spacer where a portion of the pot contacts a warming surface while another portion is elevated with respect to the warming surface. In Box, that an edge of coffee pot 18 "could" be placed on only one spacer to cause tilting of the pot is merely one possible orientation. A single possible orientation for the pot does not establish that the orientation will necessarily occur. Box does not inherently disclose a pot that is tilted such that one portion of the pot contacts a warming base while another portion is elevated with respect to the warming base.

Moreover, Box discloses that the support structures of the thermal interface device are "oriented along a geometric surface complementary to the shape of the base of the coffee pot." (Box 3:33-37.) The support structures collectively contact and support the coffee pot centrally with respect to a heat source. (Box Figure 4.) The purpose of Box's invention is

to eliminate localized and excessive heating of a coffee pot resulting from thermal conduction by creating a convection space between the pot and a heating surface. (Box 6:59-65.) Placing Box's pot 18 on only one available support structure in order to tilt the pot and reduce the size of the convection space is inconsistent with that purpose and requires the misuse of Box's invention. Finding the Appellant's claims anticipated by misusing Box's invention is unreasonable. The Examiner erred in finding claims 1, 7, and 12 as anticipated by Box.

We do not sustain the rejection of claims 1, 7, and 12 under 35 U.S.C. § 102(b) as anticipated by Box. We also do not sustain the anticipation rejection of dependent claims 2, 6-8, 11, and 14.

The Examiner rejected claims 3-5, 9, 10, and 13 under 35 U.S.C. § 103(a) as unpatentable over Box and Stasyshyn. The Examiner's analysis is directed to limitations added by those claims and does not cure the deficiencies discussed above relating to the Examiner's improper reliance on a theory of inherency. The Examiner has not offered any reason why a person of ordinary skill in the art would have positioned Box's coffee pot in a tilted manner on the thermal interface device. We do not sustain the Examiner's rejection of claims 3-5, 9, 10, and 13 under 35 U.S.C. § 103(a) as unpatentable over Box and Stasyshyn.

#### F. CONCLUSION

The Appellant has shown that the Examiner erred in finding that Box inherently discloses a spacer that tilts a liquid retaining pot on a warming base.

G. ORDER

The Examiner's rejection of claims 1, 2, 6-8, 11, 12, and 14 under 35 U.S.C. § 102(b) as anticipated by Box is reversed.

The Examiner's rejection of claims 3-5, 9, 10, and 13 under 35 U.S.C. § 103(a) as unpatentable over Box in view of Stasyshyn is reversed.

REVERSED

rvb

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